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March 16, 1948.

Frost Company,
Kenosha,
Wisconsin.

Attention: Mr. Frost.

Re: Fredrickson et al., Patent
No. 2,271,837 - Crane Co.

Dear Mr. Frost:

We have studied the claims of the above identified patent with regard to your drain valve assembly illustrated in your blue print 272-1A.

We believe that a question of infringement exists with regard to claims 1, 3 and 4 of this patent. The remaining claims, in our opinion, are not infringed by your structure.

Claim 1 contains the following limitation:

"comprising a plurality of undulations".

This limitation refers to the rod which connects the actuating dial to the valve. If a cross member such as you use at the top of the rod for connecting the rod to the eccentric valve lifting mechanism were placed at a lower portion of the rod instead of the undulations which you now use to center the rod, we believe that you would avoid claim 1 of this patent.

Claim 4 contains the following limitation:

"a portion of said rod means providing a guide at a plurality of locations at different levels to inhibit substantial lateral movement."

Here again the patentee is referring to the undulations in the rod. However, in claim 4 the undulations are claimed in broad terms. It is our opinion that if a cross member were positioned at a lower portion of the rod,

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this claim would also be avoided since the cross member would contact the interior of the pipe at the same level whereas the claim calls for such contact taking place at different levels. We believe that the cross member at the upper portion of the rod cannot be considered as a portion of the "rod means".

Claim 3 of the patent, in our opinion, is the broadest claim and does not limit the invention to the idea of maintaining the rod in a center position within the overflow pipe. This claim, however, is very poorly drawn and, in our opinion, it does not read upon the Fredrickson construction although it purports to do so. We have specific reference to the following portion of the claim:

"the said adjusting means consisting of telescopically related members connecting the said closure member with said rod member."

The means which the above portion of the claim refers to is:

"means cooperating with said closure member whereby the axial position of said valve with relation to the waste opening may be adjusted,".

In the Fredrickson construction the telescopically related members, that is, the rod end 32 and the eyelet portion of the member 25, do not function to axially position the valve. The axial position of the valve is determined by the relationship of the screw 26, the member 25 and the valve itself.

The expression "consisting of" in patent law has a very definite meaning and is not equivalent to the broader expression "comprising" or "including". The expression "consisting of" indicates that the subject matter which follows this expression is complete in itself to perform a predetermined function. The subject matter which follows "consisting of" in said claim, cannot in itself function to axially position the valve with relation to the waste opening.

We know that the above discussion is quite technical, but it could be urged on the basis of this technicality that Claim 3 is invalid in that it does not read upon the patentee's structure.

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Consequently, we feel that if Crane Company is not amenable to granting you a license on a nominal royalty which you feel you would be willing to pay, we believe that the Fredrickson patent could be successfully avoided by making the change indicated above, in which case you would avoid the infringement of Claims 1 and 4. You would then rest your defense against Claim 3 on the technicality noted.

In the circumstances we feel that if this is brought to the attention of Mr. Lange, you should have no trouble in securing a license upon a nominal royalty, particularly in view of your friendly relationship with the Crane Co.

We are herewith enclosing a copy of the Fredrickson et al., patent for your examination.

Very truly yours,

A handwritten signature in cursive script, appearing to read "W. F. Desmond".

WFD/A
enc